

## NONIMMIGRANT TREATY TRADER/INVESTOR VISA APPLICATION INSTRUCTIONS

This form, together with Form DS-156, Nonimmigrant Visa Application, constitutes the application for an E-1 Treaty Trader or E-2 Treaty Investor Nonimmigrant Visa. See visa requirements below. Incomplete or undocumented applications will be returned.

All first-time applicants seeking Treaty Trader or Treaty Investor status must complete Parts I and II. Parts I and II must be updated periodically. All individual applicants must complete Part III and Form DS-156. You must answer all relevant questions. Enter "Not applicable" where appropriate. If an enterprise is not yet fully operational, estimates and projections should be made concerning potential income, job creation, volume of sales, etc.

**Supporting documents** should be submitted in a binder with a table of contents and tabs. The following are examples of supporting documentation which should be attached to first-time applications (not every type of document is applicable in each case; the consular officer may request additional information if required): Evidence of possession and control of investment funds (bank records, financial statements, loans, savings, promissory notes, etc.); evidence of remittance to the United States (bank drafts, transfers, exchange permits, receipts, etc.); evidence of establishment of business in the United States (articles of incorporation, partnership agreement, organization and staffing charts, shares, titles, contracts, receipts, licenses, leases, etc.); evidence of the nationality of the investors/traders (passports, articles of incorporation of parent company, stock exchange listings, etc.); evidence of trade between the United States and the treaty country (invoices, bills of lading, customs clearances, warehouse receipts, shipping receipts, sales receipts, contracts, etc.); evidence of investment in the United States (titles, receipts, contracts, loans, bank statements, etc.); evidence of substantiality (financial statements, audits, U.S. corporate or business tax returns, etc.); evidence that the enterprise is not marginal (payroll records, IRS Form 941, personal tax returns, evidence of other personal assets and income); evidence that the business is a real, operating enterprise (annual reports, catalogs, sales literature, news articles, and other evidence as appropriate); curriculum vitae of the proposed visa recipient (optional).

Use additional sheets of paper, as necessary, to complete responses.

### TREATY TRADER AND TREATY INVESTOR VISA REQUIREMENTS

Section 101(a)(15)(E) of the Immigration and Nationality Act provides nonimmigrant visa status for a national of any of the countries with which the United States maintains an appropriate treaty of commerce and navigation, who is coming to the United States to carry on substantial trade, including trade in services or technology, principally between the United States and the treaty country, or to develop and direct the operations of an enterprise in which the national has invested, or is actively in the process of investing, a substantial amount of capital. The requirements for Treaty Trader and Treaty Investor visas are further elaborated in 22 CFR Part 41.51. These requirements are summarized below:

#### Requirements for a Treaty Trader (E-1) nonimmigrant visa are:

1. The applicant must be a national of a treaty country.
2. The trading firm for which the applicant is coming to the United States must have the nationality of the treaty country.
3. The international trade must be "substantial" in the sense that there is a sizable and continuous volume of trade.
4. The trade must be principally between the United States and the treaty country, which means that more than 50% of the international trade involved must be between the United States and the country of the applicant's nationality.
5. Trade means the international exchange of goods, services and technology. The item of trade, and title of that item, must pass from one party to the other in exchange for consideration.
6. The applicant must be employed in a supervisory or executive capacity, or possess highly specialized skills essential to the successful and efficient operation of the commercial enterprise. Ordinarily skilled or unskilled workers generally do not qualify.

#### Requirements for a Treaty Investor (E-2) nonimmigrant visa are:

1. The investor, either a real or corporate person, must be a national of a treaty country.
2. The investment must be substantial. It must be sufficient to ensure the successful operation of the enterprise. The percentage in investment required for a low-cost business enterprise is generally higher than the percentage of investment required for a high-cost enterprise.
3. The investment must be in a real operating commercial enterprise. Speculative or idle investment does not qualify. Uncommitted funds in a bank account or similar security are not considered an investment.
4. The investment may not be marginal. It must have the capacity to generate significantly more income than just to provide a living to the investor and family, or it must have a significant economic impact in the United States.
5. The investor must have control of the funds, and the investment must be at risk in the commercial sense. Loans secured with the assets of the investment enterprise are not considered to be at risk.
6. The investor must be coming to the United States solely to develop and direct the enterprise. If the applicant is not the principal investor, he or she must be employed in a supervisory, executive, or highly specialized skills capacity. Ordinarily skilled and unskilled workers do not qualify.

\* Public reporting burden for this collection of information is estimated to average 2 hours per response, including time required for searching existing data sources, gathering the necessary data needed, providing the information required, and reviewing the final collection. In accordance with 5 CFR 1320 5(b), persons are not required to respond to the collection of this information unless this form displays a currently valid OMB control number. Send comments on the accuracy of this estimate of the burden and recommendations for reducing it to: U.S. Department of State (A/RPS/DIR) Washington, D.C. 20520.